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The 2014 amendments to the 1993 Constitution of the Russian Federation
forthcoming (2016) *The Uppsala Yearbook of Eurasian Studies* 279.

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After the 1993 Constitution RF was adopted, some external commentators, including myself, said that the procedure for amendment, even for the non-entrenched chapters, was sufficiently difficult to preclude change. We failed to foresee the rise of a “party of power” which would deliver to both federal and regional legislatures large majorities of deputies willing to give unwavering support to presidential legislative initiatives.

Since adoption, excluding changes to subjects of the Federation listed in article 65 as a result of voluntary merger or (in the case of Crimea and Sevastopol) accession (or annexation, depending on viewpoint)¹ there have been two major sets of amendments. The first, on 30 December 2008, brought changes to four articles (81, 96, 103, and 114(1)(a)).² These lengthened the presidential term of office from four years to six (as from March 2012) and State Duma convocations from four to five years (as from December 2011), and gave the Duma a right to hear an annual report by the government on its activity, imposing a corresponding governmental duty to submit such a report. The most important effect of the amendments was to uncouple the presidential and Duma elections, so that they would only coincide (within three months) every 30 years, rather than every four.³

The second major set of constitutional amendments was adopted on 5 February 2014. There are two main thrusts: firstly, to abolish the Supreme Court and the Supreme *Arbitrazh* Court, and replace them with a new Supreme Court of the Russian Federation (SCRF), and secondly, change appointment processes for the Procuracy. Neither set of amendments is uncontroversial.

Ten Constitutional articles were altered in the 2014 reforms, as well as the title to Chapter 7. Twenty-eight other legislative acts also needed to be amended.⁴ The amended articles are, briefly: 72(n), in relation to no longer needing a separate *arbitrazh* procedure code; 81, on appointment of leading members of the Procuracy (on which reform see more below); 83, on candidates for high judicial office submitted by the President to the Soviet of the Federation and 102, on the Soviet of the Federation’s powers to appoint such, as well as the Procurator General; 104, removing legislative initiative from the soon-to-be non-existent Supreme *Arbitrazh* Court; 125, removing its right to petition the Constitutional Court; 126, defining the role of the Supreme Court; repeal of 127 which had delineated the role of the

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¹ See comment on annexation of Crimea by Anna Jonsson Cornell (“Russia’s Annexation of Crimea – A Violation of Russian Constitutional Law?”).

² Federal Constitutional Laws of 30.12.2008 Nos 6-FKZ and 7-FKZ.

³ See Jane Henderson, “Developments in Russia,” *European Public Law* 21(2) (2015): 229.

⁴ “Federation Council approves law on unification of Supreme Court, Supreme Arbitration Court,” *Interfax Russia & CIS Business Law Weekly*, December 5, 2013, available via Westlaw.

Supreme *Arbitrazh* Court; 128, on appointment of judges; and extensively to 129 on the rules for appointment of senior procurators.

The initiative to reform the pinnacle of the two hierarchies of courts in Russia was announced by President Putin on 21 June 2013 at a plenary session of the St Petersburg International Economic Forum.⁵ Despite some doubts from commentators on the wisdom of the proposal, it was carried through,⁶ so that on 5 February 2014 not only was the Constitution amended but a new version of the Federal Constitutional Law “On the Supreme Court of the Russian Federation” was adopted.⁷ The new SCRF would be set up within a six-month period. The stated rationale for unifying the pinnacle of the hierarchies of domestic courts and *arbitrazh* courts is to avoid inconsistency in approach, particularly to the Civil Code and other legislation in the civil and commercial law sphere. Conspiracy theorists (including in the Duma debate Communist faction deputy Nikolai Fedorovich Riabov) speculated that the new Court might be under Dmitrii Medvedev.⁸ In the event, Viacheslav Lebedev (born on 14 August 1943), who since 1989 had been the Chairman of the previous Supreme Court, was appointed to chair the new Court.

However, that reform, which had been sudden and unexpected when proposed eighteen months earlier, was then quite fiercely debated. This may be contrasted with the reforms to the Procuracy. They appeared on the legislative agenda with no prior warning,⁹ and were therefore not open to detailed scrutiny.

The proposal to change the title of Chapter 7 from “Judicial Power” to “Judicial Power and the Procuracy” had been made earlier as part of failed efforts to strengthen the Procuracy’s role as set out in the 1993 Constitution.¹⁰ In 1998 a draft law had been put forward to restore to the Procurator General the right of legislative initiative that he had enjoyed in Soviet times,¹¹ to add the Procurator General to the list of those who might bring to the Constitutional Court the issue of constitutionality of legislation,¹² and also to change the

⁵ *Ibid*, 233.

⁶ By Federal Law on the Amendment of the Constitution of the Russian Federation of 05.02.2014 No 2-FKZ “On the Supreme Court of the Russian Federation and the Prosecutor's Office of the Russian Federation.”

⁷ No 3 FKZ. English translation on the Supreme Court Website at www.supcourt.ru/catalog.php?c1=English&c2>About%20the%20Supreme%20Court&c3=&id=9439.

⁸ See *Stenogramma zasedaniia 12 Noiabria 2013 g.*, accessed November 17, 2015.

<http://transcript.duma.gov.ru/node/3951/>.

⁹ Noted *Ibid* by Iurii Petrovich Sinel’schikov.

¹⁰ Information from Dr Marina Belykh, Associate Professor, Ural State Law University, (formerly Ural State Law Academy) in correspondence with the author. See also Inga Mikhailovskaya, “The Procuracy and its Problems,” *East European Constitutional Review* 8, nos. 1-2 (1999) : 98-104, accessed November 16, 2015.

<http://www3.law.nyu.edu/eecr/vol8num1-2/feature/russia.html>; Gordon B. Smith, “The Procuracy: Constitutional Questions Deferred” in *Russia and Its Constitution: Promise and Political Reality*, ed. Gordon B. Smith and Robert Sharlet (Leyden: Koninklijke Brill NV, 2008, 105.

¹¹ To amend Constitution article 104(1).

¹² To amend Constitution article 125(2).

title of Chapter 7 to include reference to the Procuracy.¹³ First considered on 1 December, the draft was rejected by the Duma on September 22, 1999.¹⁴ A further attempt was made later that year, with protracted proceedings concluded without adoption on April 24, 2003.¹⁵

Now over ten years later, the title of the chapter has been changed, but the other previous suggestions, which would have enhanced the power of the Procuracy, were not put forward. Instead, the revised version of article 129 arguably undermines the Procuracy's traditional cohesion by no longer stating that, "The Procuracy of the Russian Federation shall comprise a unified centralised system with the subordination of inferior procurators to superior and to the Procurator General of the Russian Federation."¹⁶ Further, the Procurator General loses power to appoint his deputies, procurators of subjects of the Federation (albeit with agreement by those subjects) and other procurators. Under the revised Constitution, as with the Procurator General himself, his deputies "shall be appointed to and relieved from office by the Soviet of the Federation upon recommendation of the President,"¹⁷ and procurators of subjects of the Federation appointed to office by the President on recommendation of the Procurator General, with agreement of the federation subject.¹⁸ Dismissal of the procurators of subjects of the Federation is in the hands of the President. Apart from procurators of cities, districts, and procurators equated to those, which are appointed to and relieved from office by the Procurator General, other procurators are both appointed to office and relieved from office by the President. Thus, presidential control over all senior procurators personnel is constitutionally enshrined.

This increase of presidential power was barely discussed in the Duma debate. In the address by the President's plenipotentiary representative in the State Duma, Garri Vladimirovich Minkh, efficiency was cited as the motivation. The Communist Party of the Russian Federation faction opposed the reforms,¹⁹ and clearly persuaded a few others to vote with them, as the Duma approved the draft law on the Amendment of the Constitution of the Russian Federation "On the Supreme Court of the Russian Federation and the Prosecutor's Office of the Russian Federation" by 351 to 95, with four abstentions.

¹³ See *proekta Zakona RF N 98094934-2 "O popravkakh k stat'iam 104 i 125 Konstitutsii Rossiiskoi Federatsii o nadelenii General'nogo prokurora Rossiiskoi Federatsii pravom zakonodatel'noi initsiativy, pravom obrashcheniia s zaprosom v Konstitutsionnyi Sud Rossiiskoi Federatsii i ob izmenenii naimenovania glavy 7 Konstitutsii Rossiiskoi Federatsii."* The draft's passport available at <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=PRJ;n=50291>, accessed November 17, 2015.

¹⁴ Resolution N 4340-II GD.

¹⁵ Zakonoproekt N 99091057-2. See accessed November 17, 2015:

<http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=99091057-2&02>

¹⁶ Constitution article 129(1). English translation William E. Butler, *Russian Public Law* (London: Wildly, Simmonds & Hill, 2013), 29.

¹⁷ Constitution amended article 129(2).

¹⁸ Constitution amended article 129(3).

¹⁹ Particularly Iurii Petrovich Sinel'shchikov, see Stenographic Report above note 9.

The prerevolutionary Procuracy was described as the eye of Tsar, and the Soviet Procuracy was seen as the eye of the Party. Under its new formulation, the modern Russian Procuracy, already part of the Presidential Bloc,²⁰ appears to have moved even closer to being the eye of the President. Undoubtedly President Putin remembers the difficulties encountered by his predecessor Yeltsin, who could not persuade the Soviet of the Federation to dismiss Procurator General Skuratov, despite assertions by the Federal Security Service, the *FSB* (at the time headed by Putin) that Skuratov was indeed the man in a video in bed with two naked women.²¹ Although the Soviet of the Federation has retained formal power of appointment and dismissal of the Procurator General, all other leading procurators are now at the President's disposal.

²⁰ See Jane Henderson, *The Constitution of the Russian Federation: a Contextual Analysis* (Oxford: Hart Publishing, 2011), 124-7.

²¹ *Ibid* at 120.